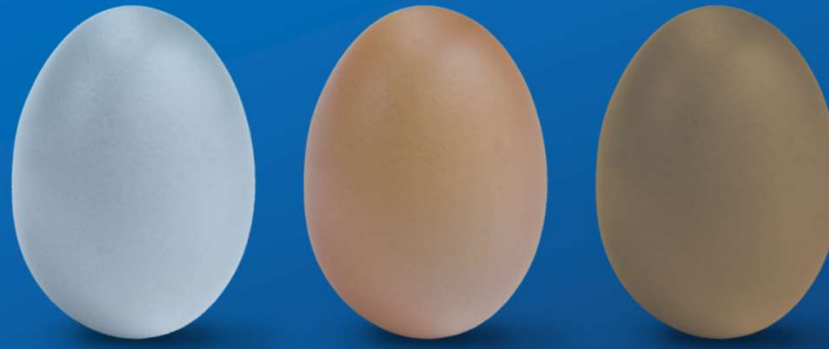


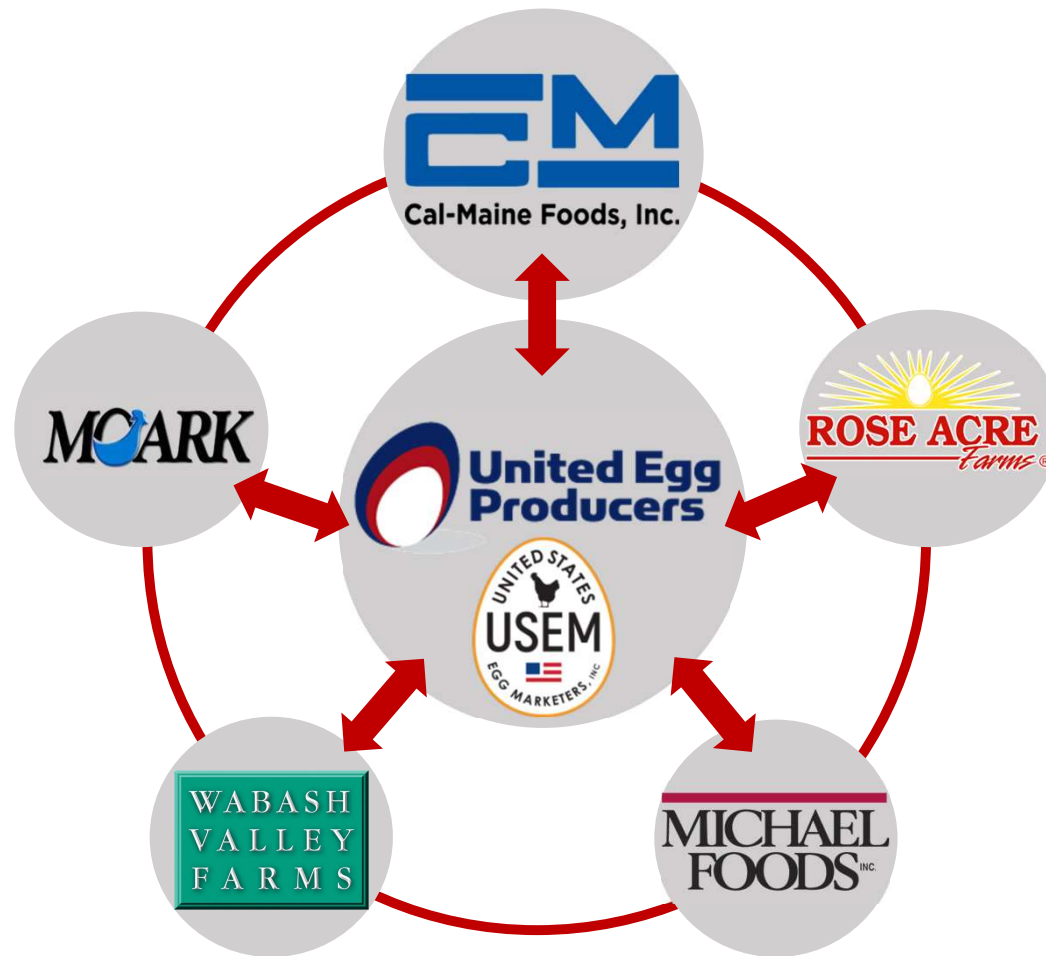
# **ATTACHMENT B**



# **Kraft Foods Global, Inc. et al. v. United Egg Producers, Inc. et al.**

---

# The Greatest Trick



# The Conspiracy

**1 Short Term Measures**

**2 Exports**

**3 Henhouse Density**

**4 Backfilling Ban**

# Producers Owning 100 Million Hens Committed

The “economic summit” exposed a bleak picture of the supply side of the business. With pullets currently in growing houses, we now can predict a layer flock of 13 million more hens in April 2005 than at the same month of 2004 if we do not find ways to dispose of older hens and increase the cull rate. If the hatch of 2005 is the same as in 2004 and we continue the hen disposal (cull) rate of 2004 then we will have a nation’s flock size of more than 300 million hens by the end of 2005 or an increase of about 25 million more hens than during the period of the industry’s highest egg returns of 2003 and 2004. Depending upon whether the industry reacts to the pending problems or not, egg prices were projected to be from 10 to 27 cents per dozen below the annual average of 2003.

Recognizing that it serves no purpose to place blame on someone, many attendees elected to be part of the solution. Of those attending, producers dedicated primarily to shell egg markets and with approximate 100 million hens made their intentions known by stating that they would implement one or both of the following recommendations:

Option # 1 To dispose of hens that are currently scheduled for disposal between January 1 and April 30, 2005 four (4) weeks earlier than previously scheduled.

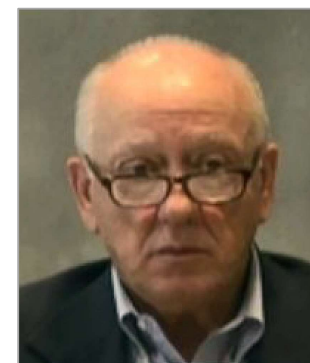
Option # 2 To reduce their December 1, 2004 flock size by 5% between the dates of January 1 through April 30, 2005.

Companies making their intentions known during the meeting were:

*Creighton Bros.  
Braswell Foods  
Mahard Egg Farms  
Tampa Farm Service  
Green Forest Egg Co.  
Feather Crest Farms  
Wilcox Farms  
Sunrise Farms of CA  
IVA, Inc.  
National Foods Corp.*

*Cal-Maine Foods  
American Egg Products  
Pearl Valley Eggs  
ISE Newberry  
Hillandale Farms of FL  
Kreher’s Poultry Farm  
Moark LLC  
Ohio Fresh Eggs  
Pilgrim’s Pride*

*Fort Recovery Equity  
Crystal Farms  
Merrill’s Egg Farms  
Randy Nelson Ventures  
Hillandale Farms of PA  
United Egg Marketing Corp.  
Berne Hi-Way Hatchery  
Hickman’s Eggs  
Midwest Poultry Services*



**Gene Gregory**

Letters have been sent to UEP members not in attendance advising them of the meeting highlights and asking if they want to make their intentions known that could be part of the solutions.

November 23, 2004

## Purpose of Exports



**Dolph Baker**

Q. Yes, and USEM and its members would move eggs out of the United States so that domestic prices that customers here would pay would go up, correct?

A. That was the goal, to improve prices in the short term.

Q. And improve prices means raise prices that customers in the United States would pay?

A. Raise the Urner Barry market.

# The Conspiracy

**1 Exports**

**2 Short Term Measures**

**3 Henhouse Density**

**4 Backfilling Ban**

# The Conspiracy

**1 Exports**

**2 Short Term Measures**

**3 Henhouse Density**

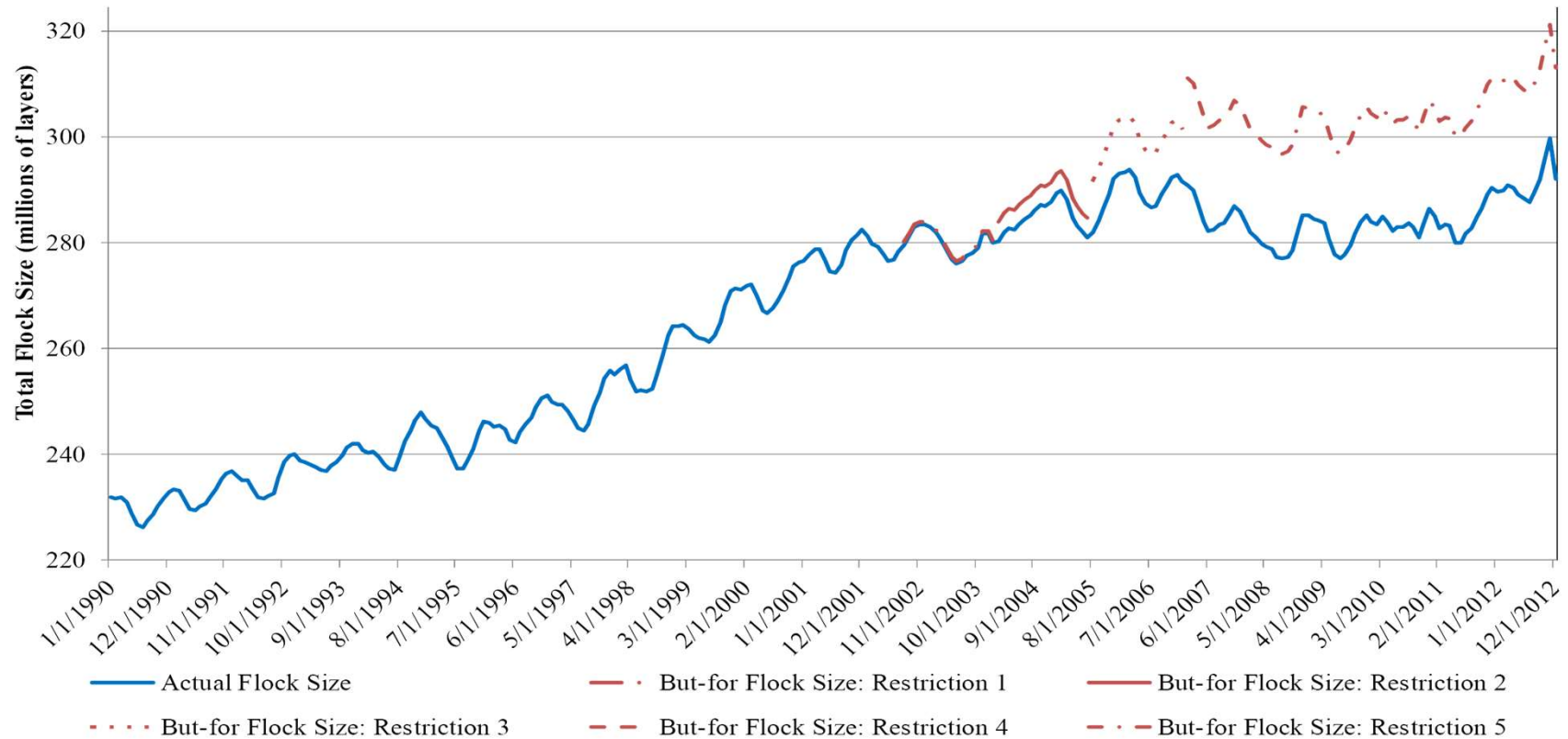
**4 Backfilling Ban**

# Substantial Harm to Competition

**Before Restraints: Unconcentrated Market  
Buyers' Market**

**During restraints: 40% of Market (Short Term Measures)  
50% of Market (USEM Exports)  
95% of Market (UEP Certified Program)**

## Actual Flock Size vs. But-For Flock Size: 1990-2012



Source: USDA.

## Procompetitive Benefits?

- **Increasing production**
- **Lowering prices**
- **Increasing consumer choice**
- **Creating a new product**
- **Improving product quality**
- **Meeting customer demand**

**Restriction must be “reasonably necessary to achieve the benefits.”**



**KAREN BROWN**, after having been  
duly sworn, was examined and testified

## No UEP-Certified Requirement Until 2004

- Defendants pitched the UEP Program
- Then customers began asking for UEP-certified
- Wal-Mart's specifications were not changed to require UEP until August 2004 – more than 2 years after the start of the UEP Program

Date Issued: \_\_\_\_\_ August 16, 2004 \_\_\_\_\_

Revision #: \_\_\_\_\_ 4 \_\_\_\_\_

Revision Date: \_\_\_\_\_ August 20, 2024 \_\_\_\_\_

Page \_\_\_\_\_ 1 \_\_\_\_\_ of \_\_\_\_\_ 3 \_\_\_\_\_



## Customers Never Asked for a Backfilling Ban



**Gary Pickett**  
**Walmart Buyer**

Q. Do you know anything about whether the UEP Certified Program allowed or disallowed backfilling?

**A. I don't know the answer to that. I don't recall.**



**Jeff Hardin**

Q. So I take it from your answer, Mr. Hardin, that you didn't discuss details like backfilling with your customers?

**A. No.**

## Cal-Maine Hid the Facts from Customers



Jeff Hardin

Q. So despite telling – despite promising that big commitment of resources and trust, you didn't tell Walmart that exports were designed to increase the domestic price of eggs?

**A. I'm sure I didn't.**

\* \* \*

Q. We didn't tell Walmart that Cal-Maine was in – coordinated the early slaughter and early molting of hens to reduce supply, correct?

**A. I'm sure I didn't.**

## Rose Acre Hid The Facts From Customers



Greg Hinton

Q. You never told your customers that the UEP coordinated early slaughters to reduce supply, did you?

**A. I don't recall, ma'am, no.**

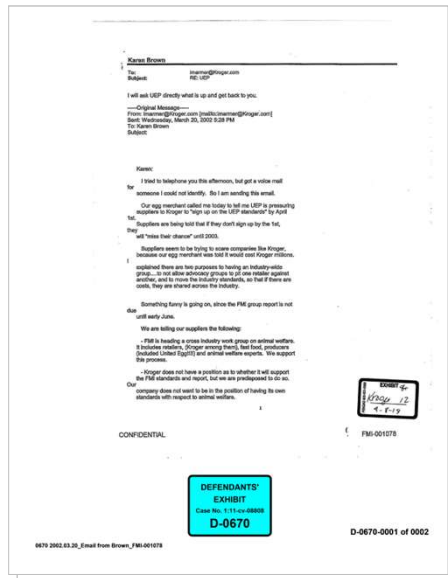
\* \* \*

Q. Did you ever discuss with your customers that the UEP had made these recommendations time and time again to its members to reduce supply?

**A. I don't – no, I believe so, ma'am.**

# Defendants Used Scare Tactics to Pressure Customers

March 20, 2002



-----Original Message-----

From: lmarmer@Kroger.com [mailto:lmarmer@Kroger.com]

Sent: Wednesday, March 20, 2002 5:28 PM

Karen:

I tried to telephone you this afternoon, but got a voice mail for someone I could not identify. So I am sending this email.

Our egg merchant called me today to tell me UEP is pressuring suppliers to Kroger to "sign up on the UEP standards" by April 1st. Suppliers are being told that if they don't sign up by the 1st, they will "miss their chance" until 2003.

Suppliers seem to be trying to scare companies like Kroger, because our egg merchant was told it would cost Kroger millions.

I explained there are two purposes to having an industry-wide group....to not allow advocacy groups to pit one retailer against another, and to move the industry standards, so that if there are costs, they are shared across the industry.

Something funny is going on, since the FMI group report is not due until early June.



# Customers Were Not Buying Into the Plan

July 16, 2002

**UEP** United Egg Producers  
1720 Windward Concourse • Suite 230 • Alpharetta, Georgia 30005  
(770) 360-9220 • Fax (770) 360-7058

July 16, 2002

UEP Officers  
Mike Bynum, Chairman  
Al Pope, President  
Michael Mills, First Vice Chairman  
Roger Deffner, Treasurer  
Dolph Baker, Secretary

UEP Staff  
Al Pope, President  
Gene Gregory, Sr. Vice President  
Linda Reickard, Vice President  
Irving Isaacson, Esq., UEP General Counsel  
Washington Office  
Ann Kilgus, UEP Government Relations  
Michael McLeod, Esq., Washington Counsel  
Randy Green, Sr. Government Relations Rep.  
Egg Marketing Center  
Dr. Don McNeeney, Executive Director  
Dr. Hilary Shabo, Director of Food Safety Programs

Official U.S. Government Representative


**FLP**  
Food Labeling Program  
Washington Office  
UEP Government Relations  
One Maryland Avenue, NW, Suite 800  
Washington, D.C. 20001  
(202) 962-2262 • Fax (202) 962-0715

Page Number  
1007-1008  
Dawson  
Washington, D.C. 20001  
(202) 962-2262 • Fax (202) 962-0715

EX-1139 PG  
CONFIDENTIAL

**United Egg Producers**

UEP Headquarters  
1720 Windward Concourse • Suite 230 • Alpharetta, Georgia 30005  
(770) 360-9220 • Fax (770) 360-7058



July 16, 2002

Dear Tim, Terri, and Karen:

Recognizing that it may be on behalf of both our Board and Staff, for the cooperative you all have extended.

This letter is a follow-up related to the audit process in program. We need to achieve our goals. We need to achieve our goals. We need to achieve our goals.

Within 30 days we expect whom UEP will sign memoranda.

As a demonstration of credibility goals we have established the Board mandated that all monthly compliance reports.

A company officer must serve a number of useful purposes. They will provide independent establish an

**UEP Officers**  
Mike Bynum, Chairman  
Al Pope, President  
Michael Mills, First Vice Chairman  
Roger Deffner, Treasurer  
Dolph Baker, Secretary

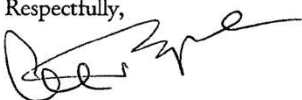
**UEP Staff**  
Al Pope, President  
Gene Gregory, Sr. Vice President  
Linda Reickard, Vice President

**Another issue: The good news, and bad news**

The press release went off without any controversy on the issue, that's the good news. The bad news is that very few of our customers are asking that the guidelines be part of their specifications. In fact, on two recent bids, industry was told that this is "only a public relations issue" and they purchased eggs from lowest bidders (not a certified company). This program will fail if our customers are not committed to the program to the same degree as the industry.

We welcome your advice and assistance. We continue to stand ready to respond in a cooperative way.

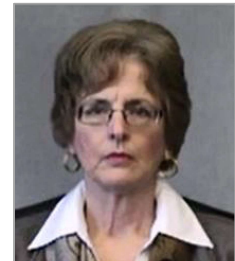
Respectfully,



Al Pope, President  
United Egg Producers



Al Pope



Linda Reickard



Gene Gregory



Dolph Baker

## Procompetitive Benefits?

- Increasing production
- Lowering prices
- Increasing consumer choice
- Creating a new product
- Improving product quality
- Meeting customer demand

**Restriction must be “reasonably necessary to achieve the benefits.”**

## The Customers Cared About Price



Marcus Rust

Q. Now, sir, between 2000 and 2002, did you or anyone, to your knowledge, from Rose Acre tell any customer that having birds in cages that were less than 60 inches was not defensible in terms of animal welfare

**A. I don't think they ever asked that question.**

\* \* \*

Q. Well, is – given your answer, sir, was it the practice of Rose Acre in terms of dealing with its customers to only provide information if they asked?

**A. You'd done it to their specifications. The only thing most customers cared about was the price they bought at.**

## No Incentive Unless Competitors Colluded



**Dolph Baker**

Q. But if you did it on your own and the entire industry didn't follow, then your costs would increase and your competitors could sell hens at lower prices, correct?

**A. Could sell eggs at lower prices, correct.**

## No Incentive Unless Competitors Colluded



**Dolph Baker**

Q. And you wouldn't have needed the animal welfare committee to tell you to go up to 56.14 square inches per hen; you could have done that on your own, correct?

A. It would be difficult to be competitive doing that on our own.

Q. That's because that would raise your price of eggs because it would reduce your flock, correct?

A. It would raise our cost.

# No Incentive Unless Competitors Colluded



**Marcus Rust**

Q. And you were opposed to that, particularly as it would have applied to either Michael Foods or -- I think you referred to as the Minnesota Iowa Group?

A. Yes. We wanted to be on the same competitive playing field.

Q. You thought letting them do that, they would be cheaters?

A. Yes. They would have an advantage over us.

## Procompetitive Benefits?

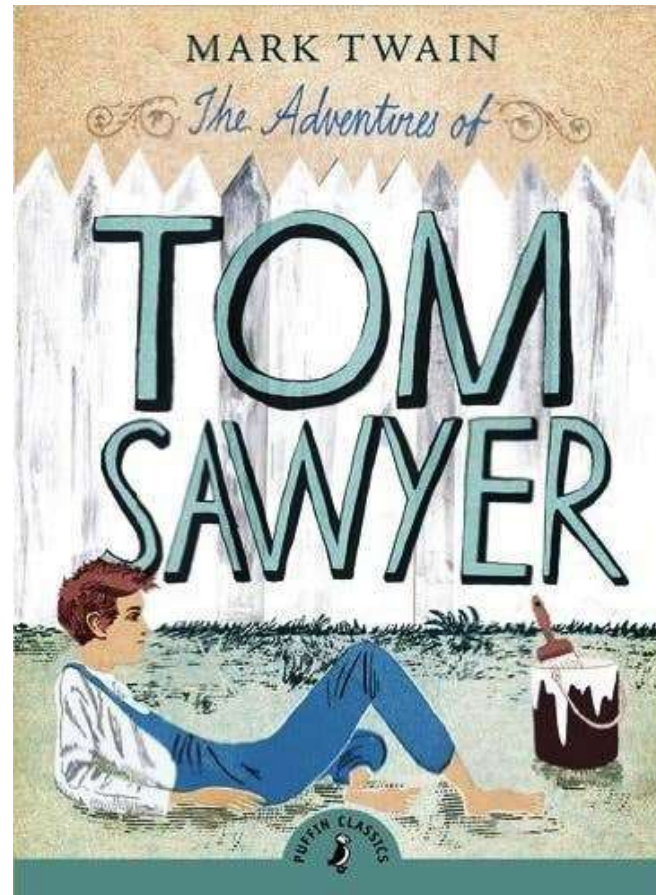
- Increasing production
- Lowering prices
- Increasing consumer choice
- Creating a new product
- Improving product quality
- Meeting customer demand

**Restriction must be “reasonably necessary to achieve the benefits.”**

## Responsibility of Conspirators

- The fact that a particular defendant did not sell directly to one or all of the plaintiffs is not a defense to a claim under the federal antitrust laws.

# The Adventures of Tom Sawyer



# Tom Sawyer Knew He Was in Trouble



## But Tom Sawyer Was an Opportunist



# Tom Sawyer Got His Way



## Purpose of Exports



**Dolph Baker**

Q. Yes, and USEM and its members would move eggs out of the United States so that domestic prices that customers here would pay would go up, correct?

A. That was the goal, to improve prices in the short term.

Q. And improve prices means raise prices that customers in the United States would pay?

A. Raise the Urner Barry market.

Cal-Maine Layer Flock Size	
Fiscal Year	Egg-Laying Hen Flock Size
1997	14.8 million
1998	15.1 million
1999	16.5 million
2000	20 million
2001	21million
2002	21 million
2003	22 million
2004	20 million
2005	18 million
2006	23 million
2007	23 million
2008	22 million
2009	27 million
2010	26.3 million
2011	26.8 million
2012	26.2 million

Source(s): Cal-Maine Form 10-Ks for Fiscal Years 1997 through 2012



## Acquisitions

Fiscal Year	Seller	Location	Layers Acquired
<del>1989</del>	<del>Egg City, Inc.</del>	<del>Arkansas</del>	<del>1,300,000</del>
<del>1990</del>	<del>Sunny Fresh Foods, Inc.</del>		<del>7,300,000</del>
<del>1991</del>	<del>Sunnyside Eggs, Inc.</del>	<del>North Carolina</del>	<del>1,800,000</del>
<del>1994</del>	<del>Wayne Detling Farms</del>	<del>Ohio</del>	<del>1,500,000</del>
<del>1995</del>	<del>A &amp; G Farms</del>	<del>Kentucky</del>	<del>1,000,000</del>
<del>1997</del>	<del>Sanbest Farms</del>	<del>Arkansas</del>	<del>600,000</del>
<del>1997</del>	<del>Southern Empire Egg Farm, Inc.</del>	<del>Georgia</del>	<del>1,300,000</del>
<del>1998</del>	<del>J &amp; S Farms/Savannah Valley</del>	<del>Georgia</del>	<del>900,000</del>
<del>1999</del>	<del>Hudson Brothers, Inc.</del>	<del>Kentucky</del>	<del>1,200,000</del>
<del>2000</del>	<del>Smith Farms</del>	<del>Texas/Arkansas</del>	<del>3,300,000</del>
2006	Hillandale	Florida/Alabama	5,900,000
2007	Green Forest Foods	Arkansas	1,000,000
2007	Benton County Foods	Arkansas	1,000,000
2008	Zephyr Egg	Florida	2,200,000
2008	Tampa Farm Service	Florida	4,000,000
2012	Pilgrim Egg	Texas	1,600,000
<del>2013</del>	<del>Manin Egg</del>	<del>Texas</del>	<del>3,200,000</del>
Total			39,900,000

Ex. 0686 Pg. 0001



- Nichols contract cage free  
400,000

## Cal-Maine's So-Called Growth



**Dolph Baker**

Q. Mr. Baker, from the time you applied for the certified program until 2010, Cal-Maine only constructed one facility, and it had a layer capacity of 1.5 million hens, correct?

A. That's correct.

Q. And this construction chart does not account for the reduced capacity that you had based on your henhouse density becoming lower, correct?

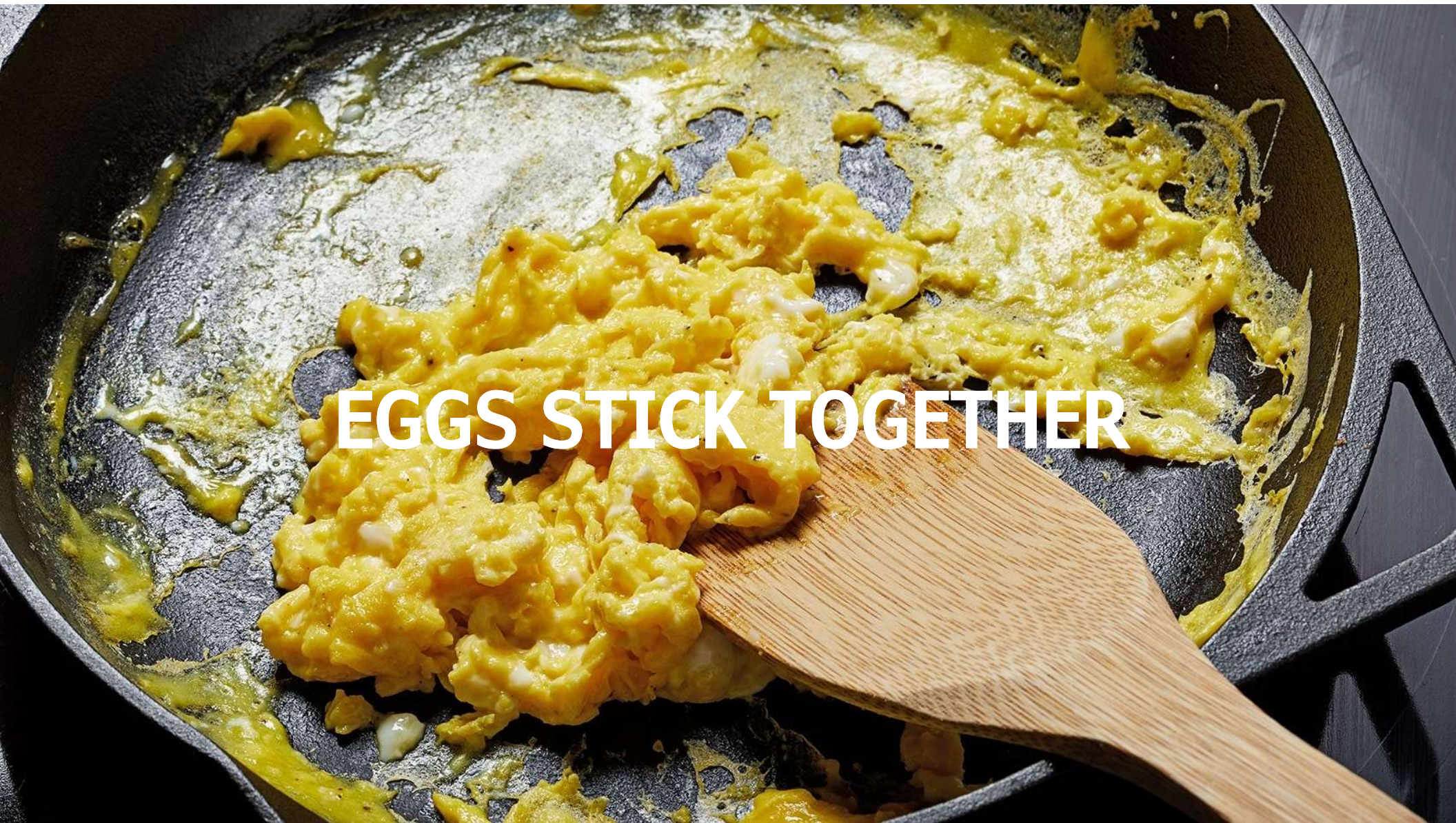
A. That's correct.

Q. And you certainly lost more than 1.5 million hens due to the restrictions from the UEP Certified Program, correct?

A. Correct.

## Rose Acre – Overall Net Change (Excluding mere Acquisitions)

Net Change - Acquisitions (Minus Existing Capacity)	663,142
Net Change - Remodels and Additions (Including UEP Impact)	-1,162,423
Net Change - Existing with No Expansion (Including UEP Impact)	-1,632,415
<b>Overall Net Change 2002-2008 (Excluding Mere Acquisitions with No Remodeling or Building)</b>	<b>-2,131,696</b>



## “Rush for Profits” and Cage Space

**MINUTES OF QUARTERLY MEETING OF THE  
BOARD OF DIRECTORS OF CAL-MAINE FOODS, INC.  
July 27, 2006**

Dr. Triplett asked about the current status of animal welfare practices. Mr. Adams indicated that hens hatched after October 1, 2006 are required to have 64 square inches of cage space per bird compared to 61 now. Mr. Baker said that larger producers are in a rush for profits and want to skip this phase and go to 67 inches per bird on October 1, 2006. Mr. Storm

# Egg Producers Stick Together



**Dolph Baker**

Q. And in your statement about larger producers being in a rush for profits, who were you referring to?

A. There were several at one of the UEP meetings that recommended that we skip a phase, but there was no action taken because it's an animal welfare program, not supply management.

Q. Who was it that had asked for it out of the large producers?

A. I don't recall.

## Egg Producers Stick Together



Marcus Rust

Q. Who were those people?

A. I don't recall who they were. They were just various producers that -- look, if you was in the southeast at certain times of the year, you'd have too many eggs. You wanted something to happen to the market because they couldn't afford to truck the eggs back to the Midwest where the breakers were.

Q. Can you give me a single name of a producer?

A. Give me a list of the top producers, I could probably tell you the ones that I would have thought would have been one side or the other. I can't say specifically from memory that Joe Blow said something.

Q. Mr. Rust, you've been in this business for 30 years. You don't know the list of the top producers?

A. I'd have to refresh looking at it.

## Egg Producers Stick Together



Marcus Rust

And go to that third paragraph, "Mr. Baker said."

BY MR. PELZ:

Q. Now, is this what you're talking about, sir, that some people were trying to rush it and get there faster?

A. Yes.

Q. Yeah. And according to Mr. Baker, it was the larger producers that were doing that, right?

A. According to what he says there, yes.

Q. Does that help you remember who it was that was trying to use this as an economic tool?

A. Not specifically, no.

Q. Generally, do you agree it was the larger producers?

A. Well, if you're losing money, that's going to be the time that, you know, it would help those more so than the others.

## The Co-Conspirators: Moark



- CEO was on UEP Board of Directors.
- Other executives were on the UEP marketing committee, executive committee, export committee.
- Participated in the UEP certified program, short-term measures, and exports.

## The Co-Conspirators: Moark



Moark agreed with UEP to publicize short-term supply restrictions.

To: Gene Gregory (gene@unitedegg.com)[gene@unitedegg.com]  
From: Craig Willardson  
Sent: Thur 4/13/2006 1:11:06 AM  
Importance: Low  
Sensitivity: None  
Subject: Flock Reduction

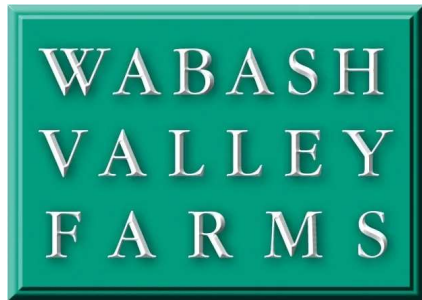
Gene—FYI—effective last week, we reduced all of our flock disposals and molts by 4 weeks, to continue through Labor Day. If you wish to let the industry know that major producers (such as Moark and others) are participating, feel free.

Plaintiff Ex. 784

Craig Willardson



## The Co-Conspirators: Wabash Valley



- CEO Larry Seger was on the Chairman of the USEM – he and Gene Gregory decided whether to bring an export opportunity to the Board.
- CEO Larry Seger was on UEP Board of Directors.
- Other company representatives were on marketing committee, export committee, and producer committee.
- Participated in the UEP certified program, USEM exports
- Participated in motions for short-term supply measures.

## The Co-Conspirators – Michael Foods

- On Board of Directors and Producer Committee.
- Largest Egg Products Producer
- Joined the certified program in 2006, perfecting the conspiracy and brought third-party contract farms into program



----- Original Message -----

From: Marcus Rust

To: Br

Sent: T

Subject:

Michael's just announced they are going into the ACC program-that alone will cause market to go up-

Brad--Michael's just announced they are going into the ACC program-that alone will cause market to go up--unsold and unpriced whites will be excellent property

Plaintiff Ex. 709

-----Original Message-----

3-6-14 R

## The Co-Conspirators – Michael Foods

**Received(Date):** Mon, 22 May 2006 18:14:43 -0000  
**From:** Gene Gregory <gene@unitedegg.com>  
**To:** Marcus Rust <marcus\_rust@goodegg.com>  
**Cc:** Dolph Baker <dbaker@cmfoods.com>, Chad Gregory  
**Subject:** Re: This is just too good not to pass along.

I'm extremely interested in getting all (if not most) of the dedicated egg breaking companies on the UEP Certified program and Michael Foods has indicated they are now willing to help us achieve this goal. **(They may have changed their mind since the D.C. meeting).** If this is possible, then it means that everyone in the industry has comparable costs (in terms of animal welfare) and we have a more unified industry (in terms of animal welfare). Only time will tell if all this is possible - maybe 3 years from now we will have a better opinion of whether we made it work.

## Verdict Form Question 8

**8. Do you find that every egg producer who joined the UEP Certified Program through 2008 (whether or not a member of UEP) participated in the conspiracy to restrict the supply of eggs?**

YES \_\_\_\_\_

NO \_\_\_\_\_

## The Only Person who Analyzed the Impact of the Conspiracy



**Dr. Baye**

# Dr. Walker's Criticisms of Dr. Baye

## Dr. Baye's Regression Results

EXPERT REPORT OF MICHAEL R. BAYE, JR.

Highly Confidential - Subject to Protective Order

January 11, 2018

Variable (a)	Main Specification Log(Production) (b)	Backfilling Ban Specification Log(Production) (c)
Restriction 1	-0.002	
Restriction 2	-0.006	
Restriction 3	-0.024 ***	
Restriction 4	-0.056 ***	
Restriction 5	-0.053 ***	
Backfilling Ban		-0.021 ***
Lag 4 Real Feed Cost	-0.439 ***	-0.783 ***
Lag 4 Real Electricity Price	0.004	-0.014 **
Lag 4 Real GDP	0.026 ***	0.024 ***
Time	0.001 ***	0.001 ***
Time Squared		
Lag 5 Real Feed Cost		
Lag 5 Real Electricity Price		
Lag 5 Real GDP		
Real Feed Cost		
Real Electricity Price		
Real GDP		
Lag 4 Population		
Lag 4 Real Soybean Price		
Lag 4 Real Corn Price		
Population		
Lag 4 TED		
Lag 4 Real Diesel Price		
Lag 4 Fed Funds Rate		
Lag 4 Agricultural Wages		
Intercept	8.284 ***	8.415 ***
Monthly Dummies	X	X
Adjusted R-Squared	0.991	0.988
Number of Observations	272	272
P-value of the Joint F-test on Restrictions	0.00	0.00

Exhibit 16  
Production Analysis  
1990 - 2012

Parameter Estimates:					
Specification 4 Log(Production) (e)	Specification 5 Log(Production) (f)	Specification 6 Log(Production) (g)	Specification 7 Log(Production) (h)	Specification 8 Log(Production) (i)	Specification 9 Log(Production) (k)
-0.001	-0.003	-0.003	-0.003	-0.002	-0.006 *
-0.003	-0.016 *	-0.009	-0.014 **	-0.005	-0.015 ***
-0.010 ***	-0.021 ***	-0.025 ***	-0.024 ***	-0.024 ***	-0.018 **
-0.024 ***	-0.061 ***	-0.039 ***	-0.031 ***	-0.026 ***	-0.032 ***
-0.048 ***	-0.026 ***	-0.058 ***	-0.044 ***	-0.053 ***	-0.054 ***
		-0.546 ***	-0.286 *		-0.115
		0.000	0.003	0.004	0.007
0.001 ***	0.001 ***	0.002 ***	0.040 ***	0.025 ***	0.046 ***
		0.002 ***	0.001 ***	0.001 ***	0.003
					0.000 *
-0.500 ***					
-0.002					
0.023 ***					
	-0.440 ***				
	0.014 *				
	0.030 ***				
		-0.004 **	-0.004 **		0.010
				0.000	
				-0.005 *	
			0.006 **		0.005 *
			0.000 **		0.004 **
					-0.003 ***
					-0.007
8.347 ***	8.191 ***	9.193 ***	9.134 ***	8.287 ***	5.876 ***
X	X	X	X	X	X
0.990	0.991	0.991	0.991	0.990	0.991
271	276	272	271	272	271
0.00	0.00	0.00	0.00	0.00	0.00

**Real  
GDP**

21

## Dr. Baye – The Great Recession

Q. Did you control for the Great Recession using interest rates?

A. **Yes.**

Q. How did you do so?

A. **I included that as a control variable to see if that impacted the results that I obtained, not including that.**

Q. What about TED spread? What is TED spread?

A. **TED spread is a measure of the credit worthiness of the economy, and it's used to measure things like the impact of the Great Recession on people's ability to get credit. It measures credit risk.**

\*\*\*

A. **Well, I think they're just alternative ways of controlling for it. If you have a Great Recession, credit might be tight, risk might be high. That might impact the ability of people to get loans and so forth. It's just another way of controlling for it, alternative to the real GDP that I used.**



Dr. Baye

# Rust: Joining the Certified Program Moves The Market

Received(Date): Thu, 15 Jun 2006 13:09:42 -0000  
From: Brad Ginnane <bginnane@goodegg.com>  
To: Marcus Rust <marcus\_rust@goodegg.com>  
Subject: Re: Egg Whites

Wow thats a big change for them. Think Phil's next?  
Brad G

----- Original Message -----

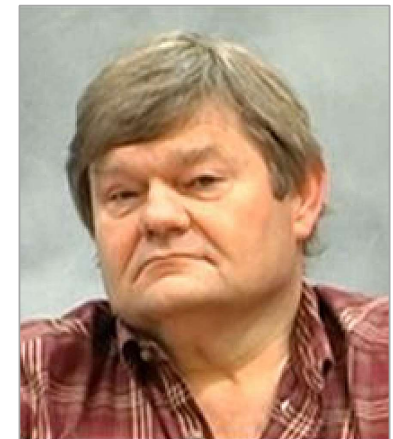
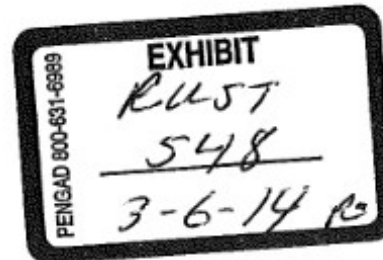
**From:** Marcus Rust

**To:** Brad Ginnane

**Sent:** Thursday, June 15, 2006 6:11 AM

**Subject:** RE: Egg Whites

Brad--Michaels just announced they are going into the ACC program-that alone will cause market to go up--unsold and unpriced whites will be excellent property



## Dr. Baye on Short-Term Measures

Q. Dr. Baye, is it your view that the short-term flock reduction measures were unsuccessful ?

A. I think it's fair to say they were unsuccessful.

\*\*\*

A. ...You might be able to have an early slaughter and lead to some short-term increases in price if you coordinate those slaughters across everyone in the industry, but that's not a way to sustain price increases as a matter of economics in the long run.

Q. Okay. So when you say they're not successful, you mean they wouldn't have had a sustained impact on price?

A. That's correct. That's correct.



Dr. Baye

## Injury

- Caused by one or more Defendants' participation.
- ***Proving the fact of damage does not require Plaintiffs to provide the dollar value of the injury.*** It requires only that Plaintiffs prove that they were in fact injured by an antitrust violation by one or more Defendants or by an alleged co-conspirator.
- Defendants' conduct need not be the sole cause of the injury.
- It is enough if Plaintiffs prove that the alleged antitrust violation was a material cause of the injury.

## Dr. Baye on Short-Term Measures

Q. Dr. Baye, did you create an econometric model to measure the impact of the short-term measures, like coordinated slaughters and hatch reductions on the nation's flock size?

A. **I did not.**

Q. How come?

A. **...you probably don't need an economist anyway. I mean, if they were slaughtering birds, it would reduce the number of birds. That's pretty -- pretty simple, I think.**



**Dr. Baye**

## Dr. Baye on Exports

You were asked:

“Do you have an opinion as to how long the effects of any USEM export would last?”

And you answered:

**“Yeah, they were clearly short-term measures. You know, they -- they have an announcement effect so that pretty much as soon as they’re announced, they have an effect based on the documentary record and, you know, I would be surprised if any individual export lasted longer than a month. That would be kind of what my position would be on that.”**



Dr. Baye

## Dr. Baye on Exports

And I believe you just testified that as to the short-term measures, they wouldn't succeed and they were not sustainable; is that correct?

Answer:

...So ***I disagree with your characterization that they didn't -- they didn't have an impact.*** I'm just saying I don't think -- I can't quantify the impact, but I -- I don't think these things are going to be -- you know, not going to raise prices for long periods of time.



**Dr. Baye**

## Cal-Maine Tipped Urner Barry Off To Exports



**Dolph Baker**

Q. All right. So during that period of time that we're talking about now, you would communicate with Urner Barry the state of the market, correct?

A. Very seldom. I was president of the company at that time, and our egg trading department talked to Urner Barry on a daily basis. I personally did not.

Q. But you would instruct your traders to talk to Urner Barry as well; that was part of the job, correct?

A. Sure.

Q. Who at Cal-Maine would discuss these issues with Urner Barry?

A. Matt Arrowsmith.

Q. And you knew that Matt Arrowsmith would be talking to Urner Barry about the exports that were going to be occurring through USEM, correct?

A. Correct.

Q. In fact, you instructed him to talk to Urner Barry about those exports, correct?

A. It was his job.

# Pigs Get Fed and Hogs Get Slaughtered

**To:** marcus rust[welby\_two@yahoo.com]  
**From:** Roger Deffner  
**Sent:** Mon 10/22/2007 2:38:30 PM  
**Importance:** Normal  
**Subject:** RE: export bid  
**MAIL\_RECEIVED:** Mon 10/22/2007 2:38:32 PM

Marcus,

I could not agree more. I am not sure we should be considering a large sale right now at any price. I will be on the call.

Roger

---

**From:** marcus rust [mailto:welby\_two@yahoo.com]  
**Sent:** Monday, October 22, 2007 4:10 AM  
**To:** Roger Deffner  
**Subject:** export bid

Roger--if you are on the US Egg Marketers thing to day please know we are against the price not against doing-- I feel anything done has to be around 80 cents or it will be slap in face to our customers in the egg breaking and egg products industry-also it doesn't make logic to offer a 60 cent price when there were unfilled bids for 80 from canada and other US egg breakers for 80 cents-remember pigs get fed and hogs get slaughtered-marcus

## October 2006 export



1720 Windward Concourse, Suite 230

Alpharetta, Georgia 30005

Fax: (770) 360-9193

Tel: (800) 735-3765  
(770) 360-9220

- The Urmr Barry Midwest Large quote increased by 40 cents per dozen during the period of filling this export. You might say that the market was primed and ready for increasing prices regardless of the export. Well let's consider the fact that we currently have approximately the same number of hens this year as we had a year ago. Last year's market increased by 12 cents per dozen for the Thanksgiving market. We must conclude that this export provided major financial benefits.
- The Urmr Barry Midwest Large quote increased by 40 cents per dozen during the period of filling this export. You might say that the market was primed and ready for increasing prices regardless of the export. Well let's consider the fact that we currently have approximately the same number of hens this year as we had a year ago. Last year's market increased by 12 cents per dozen for the Thanksgiving market. We must conclude that this export provided major financial benefits.
- Since UEP assumed the management of USEM, in the fall of 2000, we sold five (5) sizable exports prior to the recent sale. We had calculated past export benefits of being worth anywhere from as little as 6 cents per dozen to as much as 24 cents per dozen during the period of delivery of each export. The recent export exceeded any of past history and exceeded our expectations for this year. We must therefore conclude that this recent export was a major financial boost to all shell egg producers that market eggs at prices in relationship to the Urmr Barry benchmark quote.

## October 2006 export – Nestle Purchase

	B	C	D	H	J	K	L
1	Vendor	Fiscal Month	Fiscal Year	Material Description	Invoice Amount	Invoice Qty	Amount per Unit
1749	Rose Acre Farms Inc Nepco Division	10	2006	Egg Whole Solids Powder Dried 50Lb	54,648.00	39,600	1.3800
1757	Rose Acre Farms Inc Nepco Division	11	2006	Egg Whole Solids Powder Dried 50Lb	10,440.00	7,200	1.4500

Source: Plaintiff Ex. 743

57

## February 2007 export

### **USEM Takes Another Export**

The members of United States Egg Marketers (USEM) have once again approved an export of 300 containers (approximately 243,750 cases) for delivery beginning mid-February through March 9<sup>th</sup> to Germany, Israel, Italy, Japan, and the United Kingdom.

February 14, 2007

# February 2007 export – General Mills

	K	S	Y	Z	AB	AE	AF	AG	AH	AI
1										
2										
3										
4	Created on	Name	Matl Grou	MatrlSubgr	Short Text	Quantity	Order Uni	Quantity	Net Price	Currency
2384	2/1/2007	MICHAEL FOODS PAPETTIS	EGGS	LIQUIDEGG	EGG WHITES FRESH 2000 LB TOTE	2,000.00 LB		0	0.42	USD
2446	3/14/2007	MICHAEL FOODS PAPETTIS	EGGS	LIQUIDEGG	EGG WHITES FRESH 2000 LB TOTE	4,000.00 LB		0	0.65	USD

Source: Plaintiff Ex. 739

59

## April 2007 export

# USEM Takes Another Export

April 27, 2007

The latest export order could be very beneficial to the shell egg industry at a time when the industry historically is producing surplus eggs at unprofitable prices. Coupled with the fact that the industry came off the Easter market making major supply adjustments through hen disposal and molts, an export of 200 containers could create at least a short period of profitable prices. Many producers have shared opinions that the flock and egg supply adjustment this year reacted to increasing feed cost more so than past years. Some have suggested that it may be difficult to find all the needed eggs for this export. When this export was taken the Umer Barry quote for Midwest Large eggs was 91 cents and likely to follow historical trends to a down market. A year ago on the same date, Umer Barry's Midwest Large quote was 66 cents and fell to a bottom of 53 cents before beginning to recover. Within a few days of the latest export announcement, the market moved up to \$1.08 (a 17 cent increase) and higher prices are expected as we attempt to find eggs to fill the market.

The members of USEM represent 146 million layers or approximately 50% of the total U.S. layers.

# April 2007 export – Kellogg

	C	D	E	F	G	H	I	J	K	L	N	R
1	Material Group	Material	Material Description	Base Unit	Std Cost	Actual Cost	Quantity	Purchs-STD	Actual-CALC	Variance amt	Posting Date	Vendor Name
410	EGGS	K100331000	LIQUID WHOLE EGGS FRESH I3219	CWT	0.00	0.35	40360.000	13924.20	13924.20	0.00	4/1/2007	WABASH VALLEY PRODUCE
236	EGGS	K100331000	LIQUID WHOLE EGGS FRESH I3219	CWT	0.00	0.39	10052.000	3870.02	3870.02	0.00	5/24/2007	MICHAEL FOODS INC

745E

Source: Plaintiff Ex.

Kellogg-KEL00022208

61

# July 2008 export – Nestle Purchase

	B	C	D	H	J	K	L
1	Vendor	Fiscal Month	Fiscal Year	Material Description	Invoice Amount	Invoice Qty	Amount per Unit
1384	Michael Foods Inc	7	2008	Egg White Solids Powder Dry 50lb	38,610.00	6,750	5.7200
1400	Michael Foods Inc	8	2008	Egg White Solids Powder Dry 50lb	18,198.00	2,700	6.7400

# Price Effects of USEM Coordinated Exports: 2006-2008

Month	Quantity Exported			U.S. Egg Consumption -----[Dozens]-----	Percent Decrease in Domestic Sales Due to Coordinated Export	Percent Increase in Price Due to Coordinated Export
	Containers	Cases	Dozens			
(a)	(b)	(c)	[30*(d)] (d)	(e)	[-(d)/(d)+(e)] (f)	[[((1+(f))^-6.11)-1)] (g)
October-06	90	76,500	2,295,000	552,263,416	-0.41 %	2.57 %
January-07	300	246,600	7,398,000	538,780,322	-1.35	8.69
February-07	300	243,750	7,312,500	487,190,666	-1.48	9.53
April-07	200	160,000	4,800,000	524,758,489	-0.91	5.72
October-07	130 <sup>1</sup>	106,003	3,180,085	546,598,949	-0.58	3.61
June-08	100	80,000	2,400,000	510,075,868	-0.47	2.91

Note: Percent increase in price calculated using an inverse elasticity of -6.11076 for Northwest White Jumbo Shell, the most elastic demand estimated from the 2SLS model.

<sup>1</sup> Number of cases estimated using average number of cases per container for available data.

Source: NL001776; MOARK0009486-93 at MOARK0009486; NL001774-5 at NL001774; MOARK0008660-69 at MOARK0008660; UE0199809-10 at UE0199809, UE01998010; RA0000703-10 at RA0000703, RA0000704; RA0002299-306 at RA0002299; MOARK0007450-1 at MOARK0007450; MOARK0036622-3 at MOARK0036622; MOARK-IPP-0028504-5 at MOARK-IPP-0028504, MOARK-IPP-0028505; USDA.

## Plaintiffs' Purchases

Q. And what was the total dollar value of the plaintiffs' purchases from these three companies between October 2004 and December 2012?

A. **\$450 million.**

\*\*\*

A. **At least \$450 million. It's a bit north of that.**

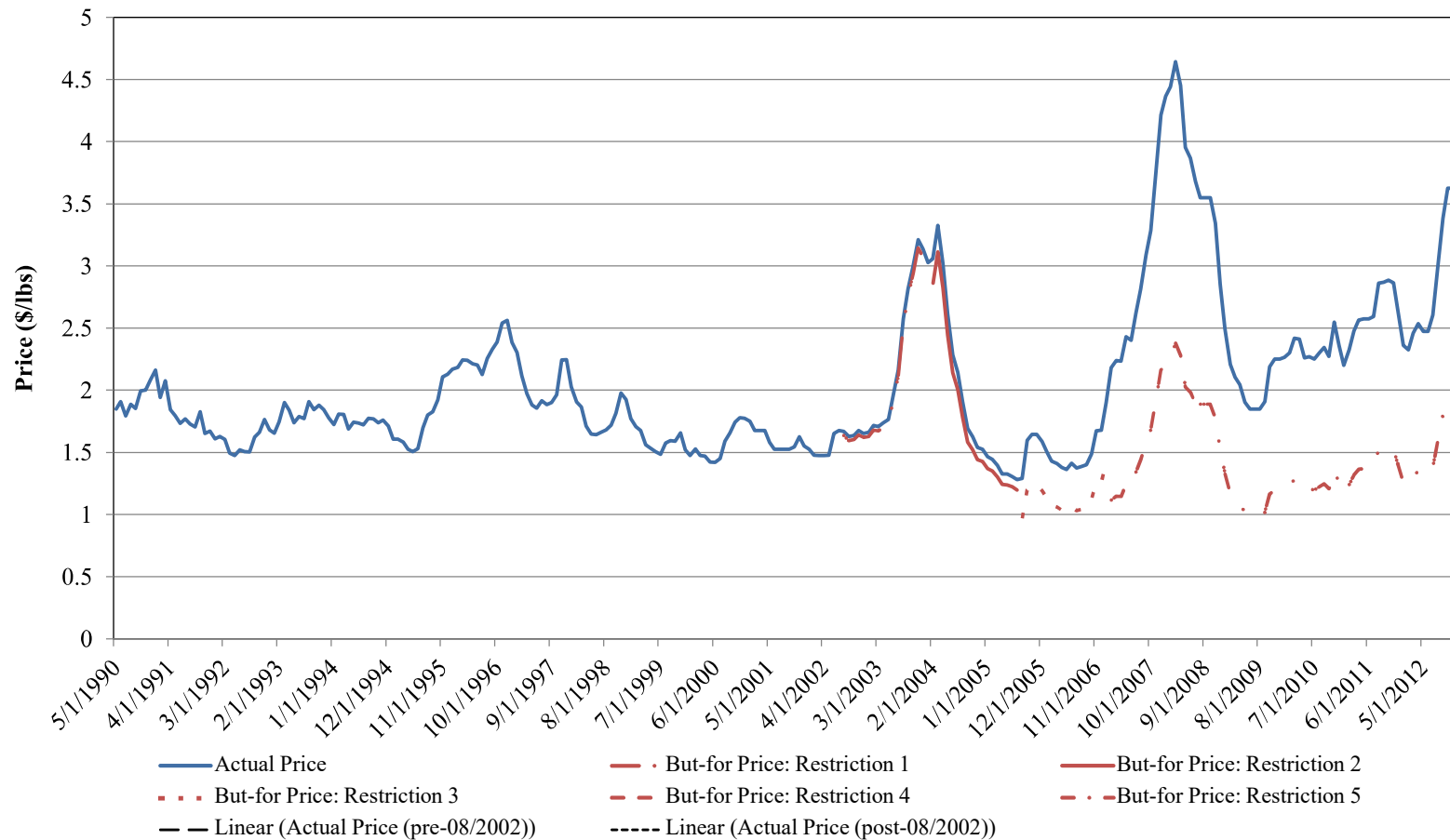
Q. And were some or all of those \$450 million in purchases at prices that would have been impacted by increases in the Urner Barry egg product prices

A. **Yes.**



**Dr. Baye**

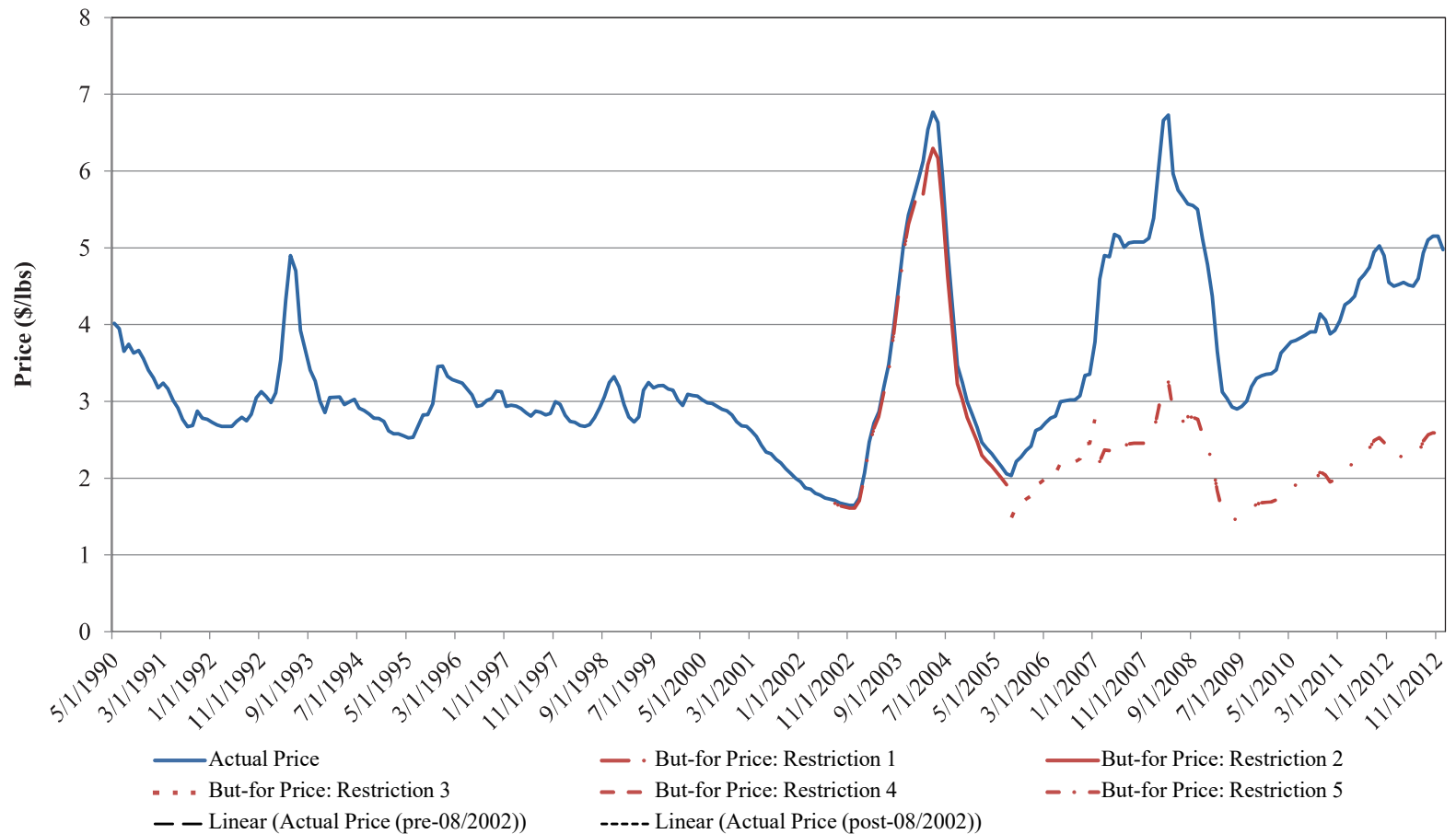
# Actual vs. But-For Price of Dried Whole Plain Egg 1990-2012



Source: Baye Rep. App'x 4

Source: Umer Barry.

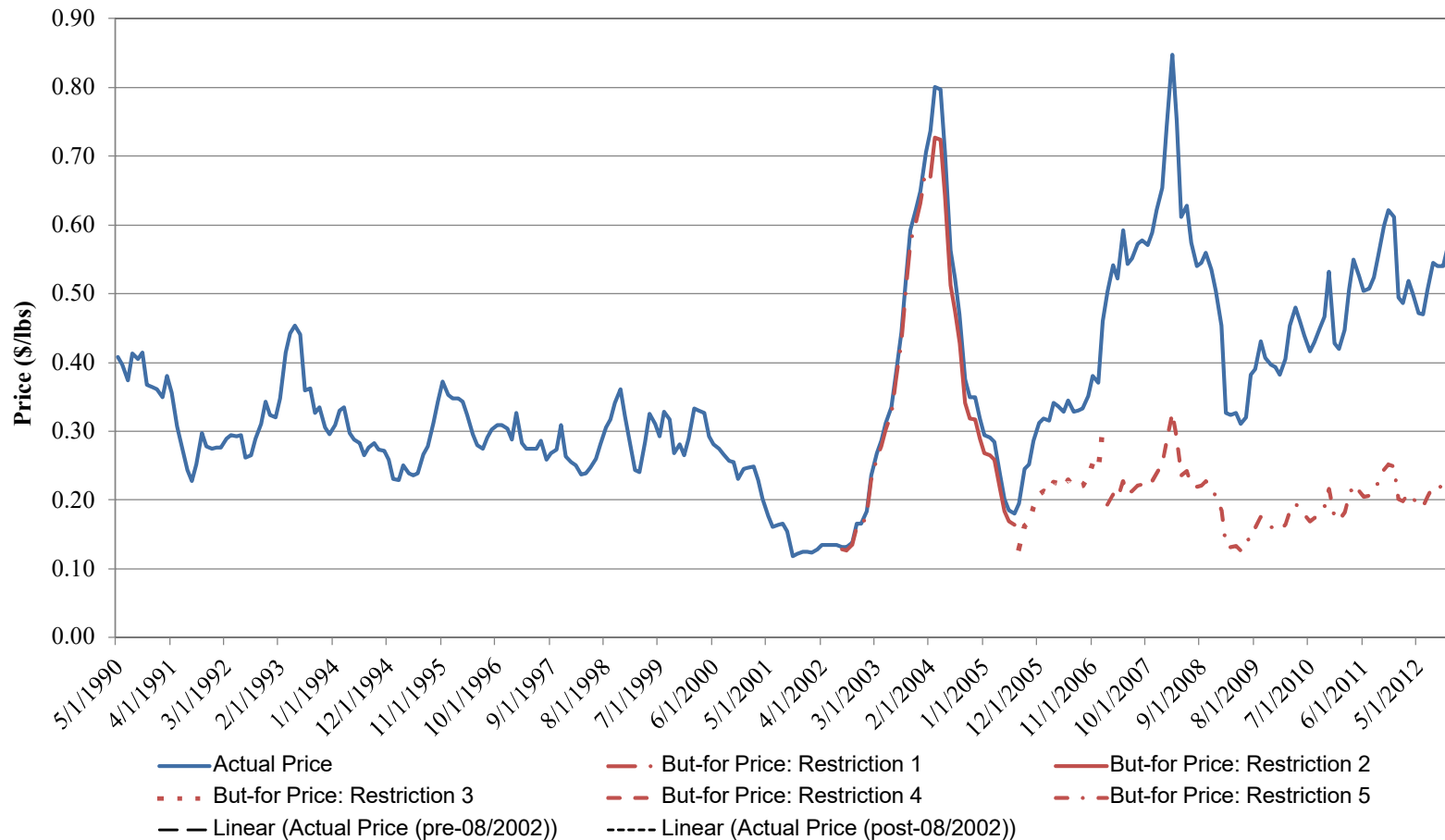
# Actual vs. But-For Price of Dried Egg White 1990-2012



Source: Baye Rep. App'x 4

Source: Umei Barry.

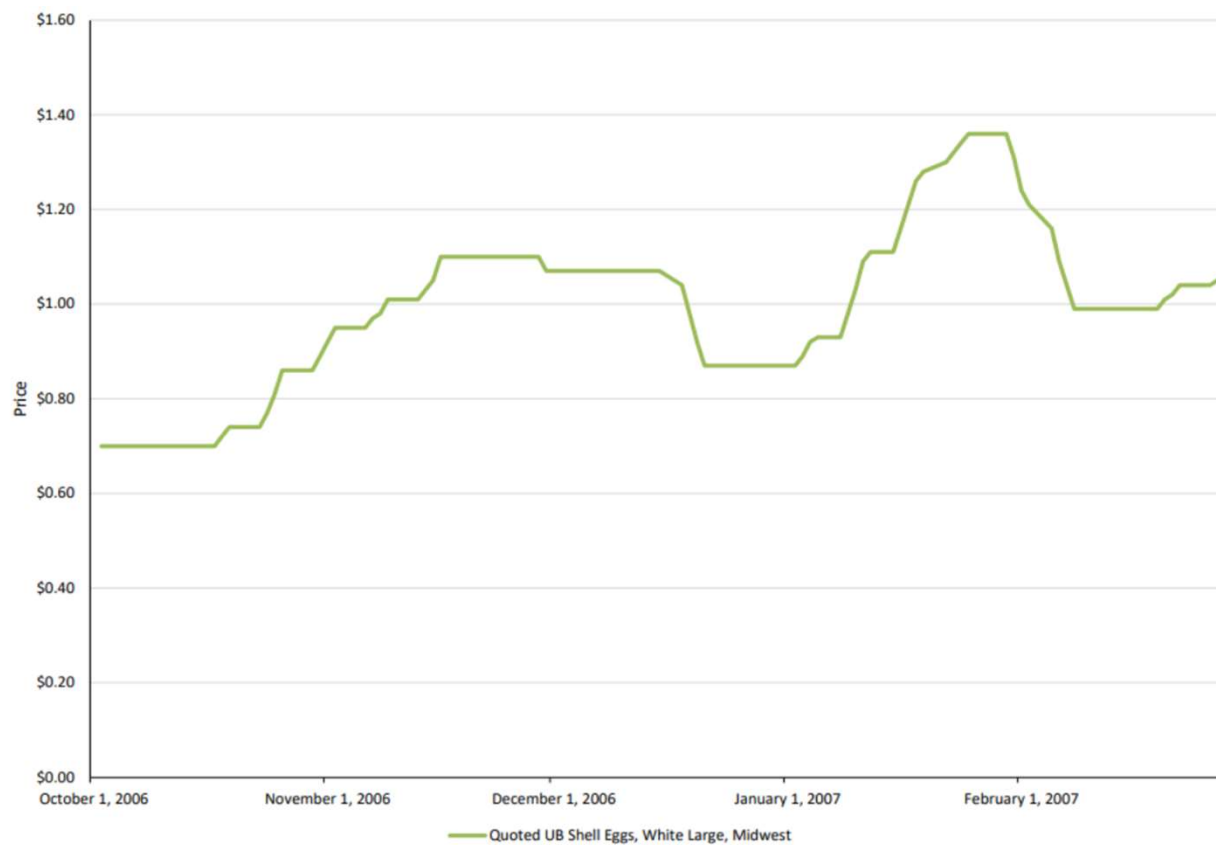
# Actual vs. But-For Price of Liquid Egg Whites 1990-2012



Source: Bayo Rep. App'x 4

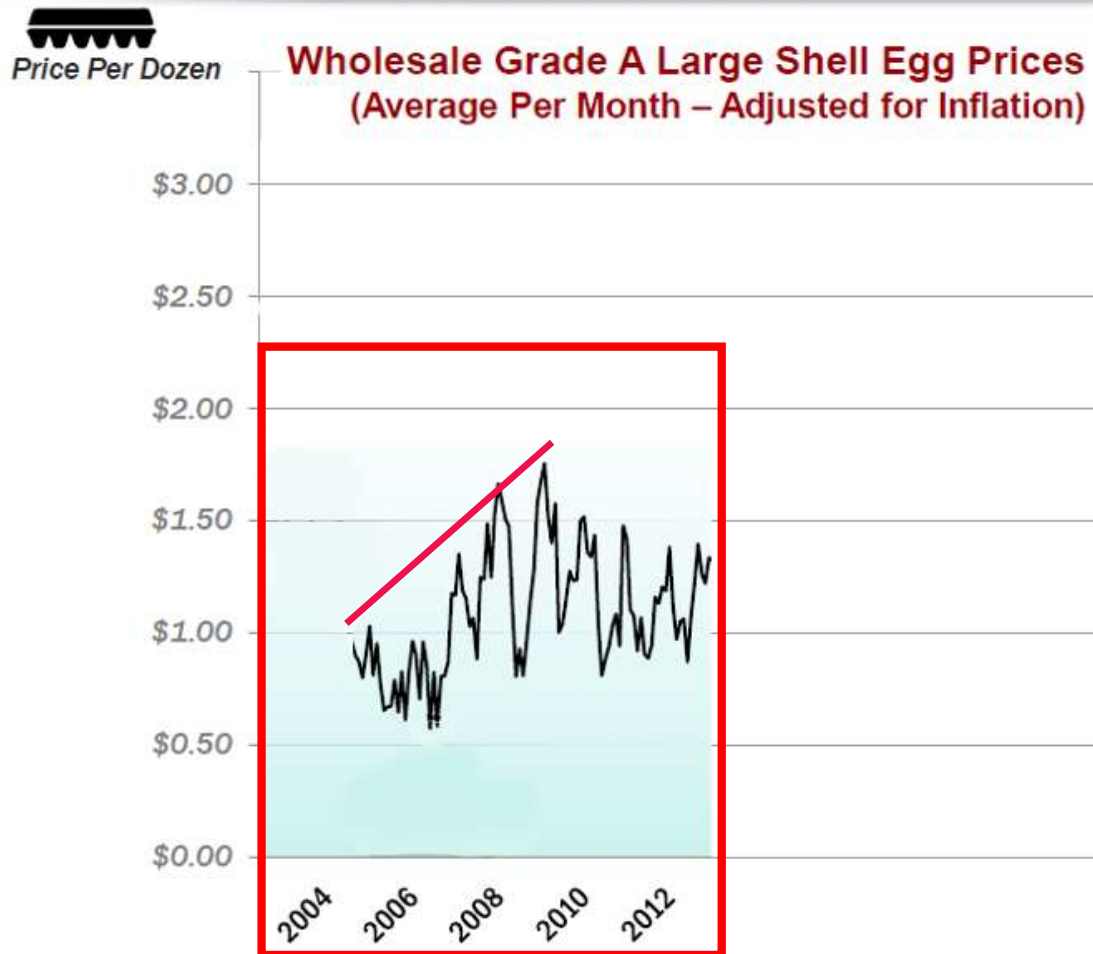
Source: Umer Barry.

## Urner Barry Shell Egg Price (White Large, Midwest)



Source: Baye Report Backup, Urner Barry Data

## Inflation-Adjusted Prices Were Low



Walker's Primary Report, Figure 11

# Short Term Measures to Restrict Supply

## UEP facilitated the agreement of competitors

**MARKETING COMMITTEE REPORT:** Committee Chairman Dolph Baker and UEP Chairman Ken Looper presented a number of statistical reports showing a history of hen inventory and egg prices. They also reported on how other companies or industries had announced cutbacks to bring supply in balance with

losses. Joe Arias pleaded with the industry to only produce eggs for their markets and not be tempted to expand with hopes of taking accounts away from other producers. Following the discussion of supply/demand, the following motions were made:

The program is to include the following:

1. To reduce each member's flock size by 5% as quickly as possible and to maintain this through July 1, 2000.
2. To immediately molt 5% of your flock.
3. To establish a committee to review, by no later than November 10<sup>th</sup>, a hatch reduction program.

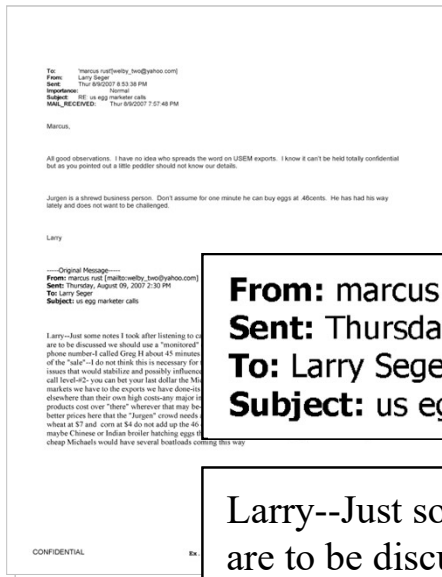
**MOTION:** It was moved by Baker and seconded by Gary West that UEP staff communicate a program of responsible growth for the industry to companies that may be considering expansion by new construction.

Both motions carried with no opposition.

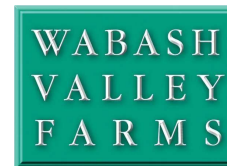
Plaintiff Ex. 386

# Marcus Rust Email Re: UEP Committee Calls

Aug. 9, 2007



Marcus Rust



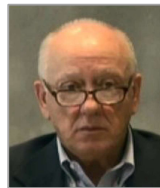
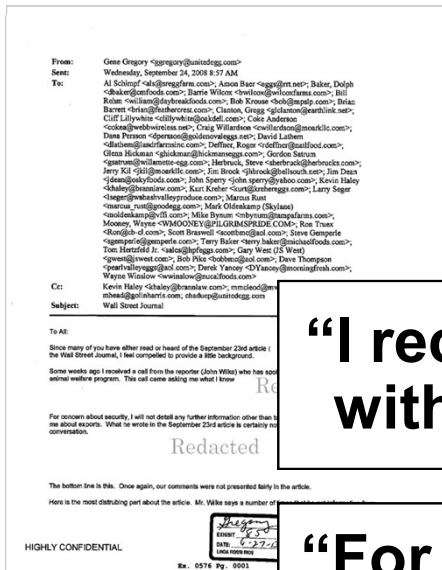
**From:** marcus rust [mailto:welby\_two@yahoo.com]  
**Sent:** Thursday, August 09, 2007 2:30 PM  
**To:** Larry Seger  
**Subject:** us egg marketer calls

Larry--Just some notes I took after listening to call today--#1 Random has always said when any pricing issues are to be discussed we should use a "monitored" conference call--this would register who was on the call by phone number--[...]

[...] anytime we are talking of issues that would stabilize and possibly influence the market they should be held on a little more stricter conf call level [...]

# Email From Gene Gregory Re: Wall Street Journal Article

Sept. 24, 2008



Gene Gregory



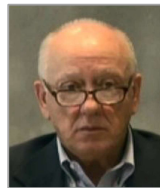
**“I received a call from the reporter . . . who has spoken with me previously about our animal welfare program.”**

**“For concern about security, I will not detail any further information other than to say that the reporter questioned me about exports.”**

# Email From Gene Gregory Re: Wall Street Journal Article

Sept. 24, 2008

From: Gene Gregory <gggregory@unitedegg.com>  
 Sent: Wednesday, September 24, 2008 8:37 AM  
 To: Al Schlingel <al@unitedegg.com>; Anne Bahr <agbahr@unitedegg.com>; Baker, Delph <delph@unitedegg.com>; Barry Wilke <bwilke@unitedegg.com>; Bill Rahn <brahn@unitedegg.com>; Bob Krause <bob@unitedegg.com>; Brian Barnes <bbarnes@unitedegg.com>; Chas, George <gchase@unitedegg.com>; Cliff Lillywhite <cliff@unitedegg.com>; Cole Anderson <cole@unitedegg.com>; Craig Wilkerson <craig@unitedegg.com>; Dana Person <dperson@unitedegg.com>; David Latham <dlatam@unitedegg.com>; Duffield, Roger <roger@unitedegg.com>; Glenn Hickman <ghickman@unitedegg.com>; Gordon Saturn <gsaturn@unitedegg.com>; Harbuck, Steve <sharbuck@unitedegg.com>; Jerry Kil <jkil@unitedegg.com>; Jim Brock <jbrock@unitedegg.com>; Jim Dean <jdean@unitedegg.com>; John Sperry <jsperry@unitedegg.com>; Kevin Haley <khaley@unitedegg.com>; Kurt Koster <kkoster@unitedegg.com>; Larry Sager <lsager@unitedegg.com>; Marcus Rust <mrust@unitedegg.com>; Matt Orlowski <morlowski@unitedegg.com>; Mike Bryan <mbryan@unitedegg.com>; Mowen, Wayne <wmowen@unitedegg.com>; Ron True <rtrue@unitedegg.com>; Scott Brunell <sbunell@unitedegg.com>; Steve Dempster <sdempster@unitedegg.com>; Terry Baker <tbaker@unitedegg.com>; Tom Hartsfield Jr. <thartsfield@unitedegg.com>; Gary West (J West) <jwest@unitedegg.com>; Bob Pika <bpika@unitedegg.com>; Dave Thompson <dthompson@unitedegg.com>; David Yarnoy <dyarnoy@unitedegg.com>; Wayne Winslow <wwinslow@unitedegg.com>; Kevin Haley <khaley@unitedegg.com>; mowen@unitedegg.com; mhw@unitedegg.com



Gene Gregory



Here is the most disturbing part about the article. Mr. Wilke says a number of times that he got information from UEP newsletters and letters to members. Why any member would share private information with a reporter is beyond my understanding.

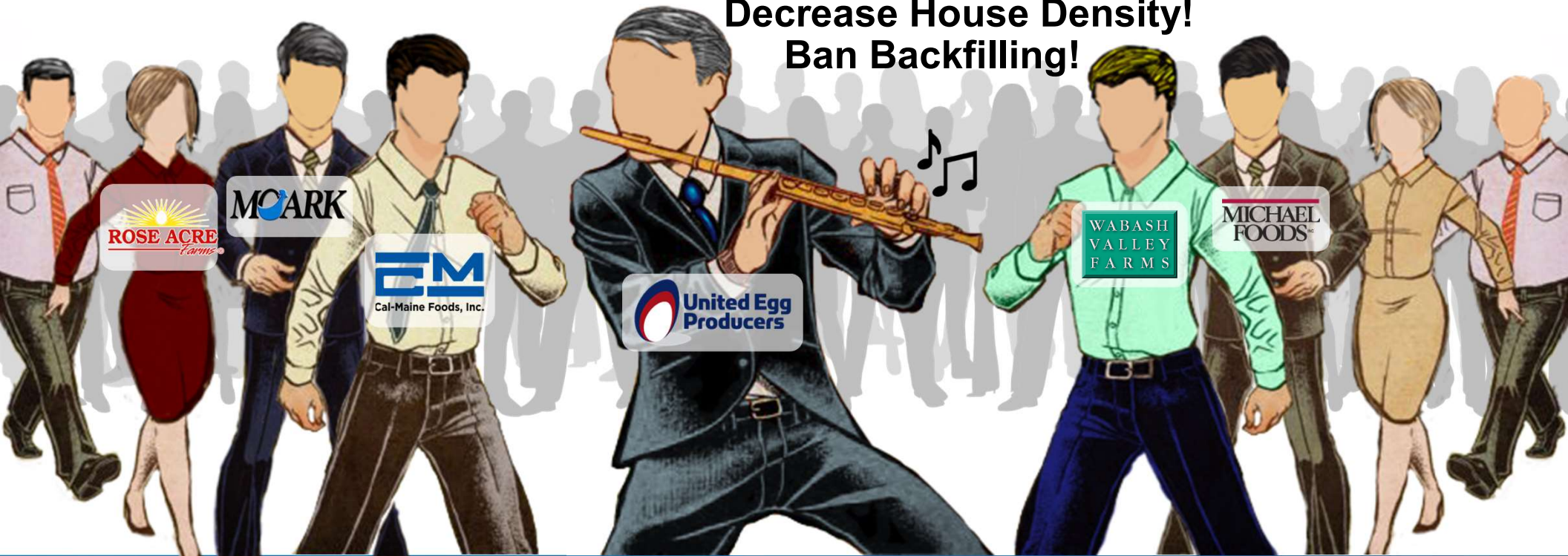
Highly Confidential  
 NUCAL-06md2002-0056239  
 Rev. 0516 Pg. 0001

# Percent Fewer Eggs Compared to But-For World

Restriction	Effective Date	Minimum Average Space Per Hen		% Reduction of Egg Production	Statistically Significant at 99% Level
		White	Brown		
Restriction 1	Aug. 2002 – Jan. 2004	56 inches	63 inches	0.2%	NO
Restriction 2	Feb. 2004 – July 2005	59 inches	66 inches	0.6%	NO
Restriction 3	Aug. 2005 – Jan. 2007	61 inches	68 inches	2.4%	YES
Restriction 4	Feb. 2007 – July 2008	64 inches	72 inches	5.5%	YES
Restriction 5	Aug. 2008 – Dec. 2012	67 inches	76 inches	5.2%	YES
Backfilling Ban	February 2005			2.1%	YES

# The Pied Piper

**Slaughter early!  
Molt early!  
Export!  
Decrease House Density!  
Ban Backfilling!**



## The Producer of the Year



Mike Bynum, Gene Gregory & Dolph Baker

### In the words of Mr. Baker

- Q. He received the award based on his communications with producers regarding the early slaughter and early molt programs, correct
- A. And recognition, yes.**
- Q. And he received the award based on his job running the UEP Certified Program that included the backfilling ban, correct?
- A. He received the award in recognition of his job, yes.**

